

INITIAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 22-001(a)(1)

Specific Purpose:

This section is being amended to connect the definition of the term "adequate notice" with the standards for adequate notice established in Section 22-071.

Factual Basis:

This amendment is necessary to respond to concerns expressed by claimants' advocates that the standards for "adequate notice" are not set forth in the definition of that term. By referring to the section setting forth standards, the amendment also helps to notify all parties of the standards for adequate notice and supports the protections afforded to claimants by the adequate notice standards.

Section 22-001(a)(3)

Specific Purpose:

This section is being amended to define the term "aid" by clarifying that, under the authorizing statute, the agency has no authority to hear appeals relating to public programs exclusively financed by county funds.

Factual Basis:

This amendment is necessary to make the regulation consistent with Welfare & Institutions (W&I) Code section 10950, which authorizes the California Department of Social Services (CDSS) to provide state hearings for "applicants or recipients of public social services" except for "aid exclusively financed by county funds." Claimants have filed appeals related to county programs, such as General Assistance. These appeals must be dismissed and the claimant referred to the county appeal program. This results in delaying the claimant's right to appeal and expending state resources to explain the limits of the agency's jurisdiction. The proposed addition makes the regulation more clearly consistent with W&I Code section 10950 by limiting the agency's jurisdiction to those programs financed by state or federal funds.

Section 22-001(a)(3)(A)

Specific Purpose:

This section is being amended to define the term "aid" by correcting the name of the Kin-gap Guardian Assistance Payment (Kin-GAP) program and by adding the following new programs to the list of programs subject to state hearing: the Approved Relative Caregiver Funding Option Program (ARC), Aid to Families with Dependent Children - Extended Foster Care (EFC) and assessments under *Harris v. CDSS* and the Resource Families Approval Program.

Factual Basis:

This amendment is necessary because Section 22-001(a)(3) defines the term "aid" by listing all public social services programs subject to a state hearing. The list also clarifies the term "public social services" as used in W&I Code section 10950.

On January 1, 2012, young persons between 18 and 21 years of age became eligible for EFC benefits under the California Fostering Connections to Success Act [Assembly Bill (AB) 12, Chapter 559, Statutes of 2010], which amended W&I Code section 11400 [and multiple other sections of the Family Code (FC) and W&I Code] to add "nonminor dependents." The EFC is a "public social service" within the meaning of W&I Code section 10950, and decisions are subject to state hearing under that section. Therefore, the program must be added to the list of such programs in Subsection 22-001(a)(3).

On June 13, 2012, the court in *Harris v. CDSS*, Sacramento Superior Court Case No. 34-2010-80000438, ruled that home approvals for relatives or non-relative extended family members are a "public social service" within the meaning of W&I Code section 10950. The court, therefore, ordered that relatives or non-relative extended family members who have received an adverse home approval decision on an application to provide foster care are entitled to a state hearing. Since actions under that program are subject to a state hearing, it must be added to the list of such programs in Section 22-001(a)(3).

The W&I Code section 11461.3, added by Senate Bill (SB) 855 (Chapter 29, Statutes of 2014), created the ARC, which allows counties to pay an approved relative caring for a non-federally eligible dependent child the same as the basic foster care rate that an approved relative caring for a federally eligible dependent child would receive. The ARC is a "public social service" within the meaning of W&I Code section 10950. Since actions under that program are subject to a state hearing, it must be added to the list of such programs in Section 22-001(a)(3).

The W&I Code sections 16519.5 through 16519.6, as amended by AB 403 (Chapter 773, Statutes of 2015), provide that hearings on denials, rescissions and exclusions under the Resource Family Approvals process described in W&I Code sections 16519.5 through 16519.6 shall be governed by W&I Code section 10950. Therefore, the Resource Family Approvals process must be added to Section 22-001(a)(3)'s list of programs subject to a state hearing.

Section 22-001(a)(6)

Specific Purpose:

This section is being amended to define the term "authorized representative" consistently with the standard that a person's authorization for a representative in a state hearing terminates at the person's death.

Factual Basis:

This amendment is necessary to make the regulation consistent with Section 22-001(c)(2), which defines "claimant" to include an applicant or recipient of aid, or the representative of the estate of a deceased applicant or recipient. Section 22-004.4 provides that when a claimant dies, the state hearing proceeding may be continued only by or on behalf of the representative of the estate. The proposed addition prevents confusion by making the definition of "authorized representative" consistent with Section 22-004.4.

Section 22-001(c)(2)(H)

Specific Purpose:

This section is being amended to define the definition of the term "claimant" to include relatives or non-relative extended family members who have received an adverse decision on an application for approval to provide foster care.

The amended definition also cross-refers to the jurisdictional limits in Sections 22-001(c)(2)(B)(1) and 22-003.15. The State Hearings Division has no jurisdiction to decide administrative disputes regarding the placement or removal of a foster child.

Factual Basis:

This amendment is necessary because Section 22-001(c)(2) defines the term "claimant" by listing all persons who are legally entitled to a state hearing. State law has expanded the class of persons entitled to a state hearing.

On June 13, 2012, the court in *Harris v. CDSS*, Sacramento Superior Court Case No. 34-2010-80000438, ordered that relatives or non-relative extended family members who have received an adverse decision on an application for approval to provide foster care are "applicants for or recipients of public social services" entitled to a state hearing under W&I Code section 10950. Therefore, they must be added to the list of persons legally entitled to state hearings.

The W&I Code sections 16519.5 through 16519.6 [added by AB 403, Chapter 773, Statutes of 2015], provide that hearings on denials, rescissions and exclusions under the Resource Family Approvals process shall be governed by W&I Code section 10950. Therefore, persons subject to a denial, rescission or exclusion under the Resource Family Approvals process must be added to the list of persons legally entitled to state hearings.

Both *Harris* and Resource Family Approval decisions concern home approvals for possible placement of children. Only the home approval decision is subject to a state hearing; foster child placement or removal is not. The cross-reference is necessary to avoid confusion.

Section 22-001(c)(5)

Specific Purpose:

This section is being amended to define the term "county" consistently with W&I Code section 10952.5 by correcting a reference to a section of the Manual of Policies and Procedures (MPP) that no longer exists.

Factual Basis:

This amendment is necessary to make the definition of "county" consistent with W&I Code section 10952.5, which establishes requirements for counties that do not apply to the Department of Health Care Services (DHCS).

The amendment is necessary because the term "county" is defined to include the DHCS except in those sections of the MPP, including MPP section 22-053.113(f), that implement W&I Code section 10952.5. The MPP section 22-053.113(f), which relates to postponements, was renumbered in 2007. Before 2007, it was numbered 22-053.165. The 2007 revision inadvertently omitted to change the old reference in 22-001(c)(5). The proposed amendment corrects that omission.

Sections 22-001(f)(1)(A)(2) and (3)

Specific Purpose:

These subsections are being added to define the term "filing date" for hearing requests sent by facsimile or electronically. Other subsections are being renumbered as required by the addition.

Factual Basis:

The additions are necessary because in addition to written and telephoned requests, the State Hearings Division receives requests for hearing by facsimile, email and other electronic means including on-line hearing request forms. The proposed additions define the filing date for these requests as the date submitted. The filing date determines important hearing rights.

Sections 22-001(f)(1)(A)(4-6) renumbered from 22-001(f)(1)(A)(2-4)

Specific Purpose/Factual Basis:

These sections are being renumbered due to the adoption of new Subsections (2) and (3).

Section 22-001(f)(1)(A)(5) (as renumbered):

Specific Purpose:

This section is being amended to add protection for claimants' due process rights by defining the presumed filing date of a request for hearing at five days, rather than three days, before it is stamped "received" by the State Hearings Division.

Factual Basis:

This amendment is necessary to respond to concerns expressed by claimants' advocates that claimants' due process rights were being limited by the presumption that a hearing request was filed three days before the request was stamped "received" by the State hearings Division. Section 22-001(f)(1)(A)(5) assigns a filing date to requests for hearing that do not show a postmark, facsimile sending date, electronic sending date or hand-delivered receipt date. The proposed amendment extends the presumed time of sending the request to five days prior to receipt by the State Hearings Division. The extended period is consistent with the time for mailing required in Code of Civil Procedure section 1013(a), which governs service of process in civil actions. The extended period is also more consistent with the time actually required for a request for hearing to be placed in a mailbox, picked up by the postal service, delivered to the CDSS central mail room and forwarded to the State Hearings Division.

Section 22-001(l)(1)(a) and (b)

Specific Purpose:

This section is being amended to require that both CDSS and the California Department of Health Care Services (DHCS) are subject to the language-compliant notice requirements set forth in Government Code (GC) section 7290 et seq. and MPP Section 21-115.2.

Factual Basis:

The amendment is necessary to make the regulation consistent with California Code of Regulations (CCR), Title 22, section 50953, which subjects all Medi-Cal hearings, including those in which DHCS appears, to CDSS' regulations involving hearing procedures. Section 21-115.2 requires forms and other written materials required for provision of aid or services to be available and offered to applicants and recipients in their primary languages. The GC section 7290 *et seq.* also requires state agencies, including CDSS and DHCS, to provide appropriate bilingual services to individuals who have identified languages other than English as their primary languages.

The proposed amendment replaces the term "CDSS" with the term "the Department," which is defined to include both CDSS and DHCS in Section 22-001(d)(3). This amendment is necessary to ensure that limited-English proficient claimants and their advocates are aware of their statutory rights.

The DHCS already conforms to the standard codified by this amendment. See All County Welfare Directors Letter No. 13-13 (May 23, 2013).

Section 22-003.1

Specific Purpose:

This subsection is being amended to make the regulation consistent with W&I Code section 10950 and MPP section 22-001(a)(6).

Factual Basis:

The amendments are necessary because W&I Code section 10950 provides statutory authority to provide hearings related to "public social services," which is defined to exclude "aid exclusively financed by county funds." County-funded and administered programs are not subject to state hearings. The added language refers to "county-administered state aid programs" to clarify that there is no right to a state hearing regarding a county-funded and administered program, such as General Assistance or General Relief.

The amendment is also necessary because Section 22-001(a)(6) defines "county action" to include county action or inaction related to a claimant's application for or receipt of aid. The proposed amendment reiterates the phrase "or inaction" to avoid confusion.

Section 22-003.141

Specific Purpose:

This subsection is being added to make the regulation consistent with W&I Code sections 16519.5 through 16519.6, which created the Resource Family Approval process and provide a right to a state hearing to dispute a home approval decision.

Factual Basis:

The proposed addition is necessary to distinguish decisions under *Harris v. CDSS*, Sacramento Superior Court Case No. 34-2010-80000438, or under the Resource Family Approval process, from child placement decisions. There is a right to a state hearing to dispute an action or inaction under *Harris v. CDSS* or the Resource Family Approval process, but there is no right to a state hearing to dispute a child placement decision.

The court in *Harris v. CDSS* ruled that home approvals for relatives or non-relative extended family members seeking to provide foster care are "public social services" within

the meaning of W&I Code section 10950. The W&I Code sections 16519.5 through 16519.6 (AB 403, Chapter 773, Statutes of 2015) provide that hearings on denials, rescissions and exclusions under the Resource Family Approvals process shall be governed by W&I Code section 10950. County actions under both *Harris* and Resource Family Approvals are subject to state hearings. However, these home approvals are not custody decisions. The proposed amendment distinguishes between home approvals, for which there is a right to a state hearing and child custody decisions, for which there is no right to a hearing because the State Hearings Division lacks jurisdiction.

Sections 22-004.1, .2, .22, .3 and Section 22-073.12

Specific Purpose:

These sections are being amended to establish the right to request a hearing electronically or by telephone.

Factual Basis:

These amendments are necessary to make the state hearing process more efficient and convenient for claimants and respondents. All parties use electronic communications, currently including email and on-line forms, in processing state hearings. Legislation implementing the Affordable Care Act of 2010 requires the agencies that make Medi-Cal eligibility determinations, including CDSS, to accept electronic communications. (See, e.g., W&I Code section 14005.37, AB 1, Chapter 3, Statutes of 2013, Ex. Sess.)

The proposed amendments add the word "electronic" to acknowledge that requests for hearing are received by electronic means as well as on paper and to establish that electronic hearing requests can trigger aid pending the hearing when filed within the time limits for aid pending.

The proposed amendments will improve efficiency of the hearing process by allowing the use of securely transmitted electronic copies of hearing requests, rather than paper originals. The proposed amendment reflects the current practice of accepting hearing requests and maintaining hearing files electronically.

Since electronic messages, telephone calls and oral requests can be received in any CDSS office, the proposed amendments eliminate the term "in Sacramento." Although CDSS' customer service unit happens to be located in Sacramento, there is no further need for a regulation requiring that location.

Section 22-004.21

Specific Purpose:

This subsection is being amended to protect the claimant's right to request a hearing in writing without using the specific paper form used by the county to notify the claimant of the disputed action.

Factual Basis:

This amendment is necessary because claimants who wish to request a hearing may not have the specific Notice of Action form used to notify them of the disputed action. The back of every Notice of Action (Form NA9) includes a form to request a state hearing. The form has a blank for the claimant to describe any disputed issue; it need not be the specific issue raised on the front of the notice. The amendment substitutes the indefinite for the definite article to clarify that a claimant may use any NA9 form, not "the" specific form attached to the notice the claimant is disputing.

Section 22-004.4

Specific Purpose:

This subsection is being amended to correct an ambiguity in the previous version of the regulation governing claims filed by a claimant who dies before the hearing.

Factual Basis:

The proposed amendment is necessary to clarify that this section is consistent with Subsections 22-001(c)(2)(A) and (C) which define a "claimant" to include an applicant, a recipient or a representative of the estate of a deceased applicant or recipient. A deceased applicant or beneficiary is not a claimant. Therefore the word "claimant" is confusing if it is used to refer to the deceased applicant or beneficiary, who must be succeeded by the representative of the decedent's estate. The word "decedent" is being substituted for the word "claimant" to make the regulation clear and consistent.

Section 22-009.13 and .14

Specific Purpose:

These subsections are being added to make the regulation consistent with W&I Code section 10951 by allowing claimants to request a hearing after 90 days, but no more than 180 days, after the date of the adverse notice of action if they have good cause for the delay, and by allowing claimants to request a hearing after more than 180 days if the principles of equity jurisdiction apply.

Factual Basis:

The W&I Code section 10951, as amended by AB 921 (Chapter 502, Statutes of 2007, effective January 1, 2008), allows claimants to request hearings after 90 days, but no more than 180 days, after the date of the notice of action if they have good cause as determined by the director. Section 10951 also provides that the time limits may not "preclude the application of the principles of equity jurisdiction as otherwise provided by law." The

proposed addition implements as regulations these good-cause and equity provisions of the amended Section 10951.

Section 22-009.2

Specific Purpose:

This section is being amended to restrict state hearings from reviewing In-Home Supportive Services (IHSS) benefits when a request for hearing is filed outside the jurisdictional time limits and the county has not received any report of changed circumstances that would require a reassessment of the recipient's need for IHSS services.

Factual Basis:

This amendment is necessary to prevent delays in reassessments of recipients' need for IHSS services. Section 22-009.2 was added as an exception to the requirement that claimants file their requests for hearing within 90 days after receiving notice of the disputed action unless there is good cause for delay or equitable jurisdiction applies. Section 22-009.2 allows a state hearing to review the amount of aid received by the claimant in the 90 days prior to the request for hearing.

Review under this section is inappropriate for recipients of IHSS whose need for services has changed, because state law requires the county to reassess a recipient's IHSS services before taking action based on a change of circumstances. See, e.g., MPP section 30-761.12.

Section 22-045.22

Specific Purpose:

This subsection is being added to establish rights to expedited state hearings.

Factual Basis:

The addition is necessary because some claimants have urgent needs that must be resolved by an expedited state hearing. The proposed addition provides for expedited hearings to protect the claimant's health and safety, successful welfare-to-work participation or other urgent needs.

Section 22-045.3

Specific Purpose:

This section is being amended to increase the notice time for hearings from 10 to 15 days, and to create an exception from this 15-day requirement for expedited hearings.

Factual Basis:

This amendment is necessary to make the regulation consistent with CCR, Title 10, section 6614, which requires at least fifteen days' notice for hearings under the Affordable Care Act of 2010. The proposed amendment will require the State Hearings Division to provide a hearing notice 15 days before all regularly scheduled hearings, increasing the notice previously given in CalFresh, CalWORKs and Medi-Cal cases. The proposed amendment also provides for less notice when an expedited hearing is required under Section 22-045.2.

Sections 22-045.4 and .41 through .44

Specific Purpose:

This section is being amended to establish procedures for expediting state hearings.

Factual Basis:

This amendment is necessary to expedite hearings consistently and fairly. The proposed addition governs granting and denying expedited hearing requests, notifying parties of the grant or denial and providing notice of the expedited hearing. The proposed addition sets time limits for the county to provide the Statement of Position and for the Administrative Law Judge to issue a decision. These procedures were described in All County Letter No. 13-40, *supra*.

Sections 22-050.23, 22-051.5

Specific Purpose:

These subsections are being amended to establish rights to:

- Object on the record to a claim of evidentiary privilege by the other party,
- Examine all evidence admitted to the administrative record for consideration in the hearing decision.

Factual Basis:

These amendments are necessary to respond to concerns expressed by claimants' advocates and county representatives that the regulations did not provide for on-the-record procedures when a party claims an evidentiary privilege to justify the refusal to provide evidence to the other party. When evidence is withheld under a claim of privilege, the administrative law judge must decide whether the evidence is privileged and whether it should be included in the administrative record.

These amendments are also necessary to protect the claimant's due-process rights to object to the claim of privilege on the record, and to review any evidence considered in a hearing decision. Claimants' advocates have expressed concern that some counties consistently assert a right to use privileged evidence in the proceeding, without allowing the claimant

and the claimant's authorized representatives to examine the evidence. That would be inconsistent with due process, which requires that each party has a meaningful opportunity to respond to the other party's evidence.

Section 22-051.43

Specific Purpose:

This section is being added to protect a party's right to object to a claim of privilege, by requiring a person who declines to provide information responsive to a subpoena duces tecum based on a claim that the information is privileged, to state the factual and legal basis for the claim of privilege.

Factual Basis:

This addition is necessary because persons responding to subpoenas may decline to provide information responsive to a subpoena duces tecum based on a claim of privilege. If the person does not state the factual and legal basis, the requesting party cannot effectively object to the claim. This addition is also necessary to allow the administrative law judge to decide whether any privilege applies and to determine whether the evidence must be excluded, redacted or admitted to the administrative record.

Section 22-051.7

Specific Purpose:

This section is being added to allow an Administrative Law Judge to make referrals for possible action under Government Code section 11187.

Factual Basis:

This addition is necessary to respond to concerns expressed by claimants' advocates that state hearings regulations include no enforcement mechanism for failure to respond to a subpoena. Government Code section 11187 allows a department head to petition the superior court for an order compelling compliance with an administrative subpoena. The proposed addition permits Administrative Law Judges to refer compliance failures to the department head for possible action under Government Code section 11187 by CDSS.

Section 22-054.211(b)(3)(B)

Specific Purpose:

This section is being amended to establish an exception to the 30-day completion requirement for conditional withdrawal agreements. The amended section allows additional time, when necessary as a result of the claimant's delay, for the county to complete actions required by a conditional withdrawal agreement.

Factual Basis:

The amendment is necessary because the conditions for withdrawing a claim may include county action that is contingent on information to be provided by the claimant. When the claimant delays in providing this information, it may not be possible for the county to take action within 30 days after the conditional withdrawal is signed.

Section 22-054.211(b)(3)(C), (D), (E)

Specific Purpose:

These sections are being amended and added to specify the procedures for resolving a claim that has been conditionally withdrawn.

Factual Basis:

The amendments are necessary because parties to state hearings were uncertain how state hearings would be resolved after a conditional withdrawal. The amended regulation clarifies and describes the resolution process after a conditional withdrawal. Subsection (C)'s amendment is necessary because the subsection previously referred to "reinstatement" of a hearing request, which was an undefined term that did not inform claimants of their rights to request a new hearing to dispute the redetermination after a county issues the required notice of redetermination and the original hearing request is dismissed. Subsection (D)'s addition is necessary to establish the claimant's right to reschedule the hearing if the county fails to issue the required notice of redetermination. Subsection (E)'s addition is necessary to establish the claimant's right to report a county's failure to comply with a conditional withdrawal agreement.

Section 22-054.222

Specific Purpose:

This section is being amended to allow 30 days instead of 15 days for a claimant to request that a dismissal decision based on non-appearance be set aside to schedule a new hearing.

Factual Basis:

The amendment is necessary because Department staff have observed that for many claimants, 15 days is not enough time to gather and present evidence of good cause. For example, if the claimant was prevented by illness from appearing, a doctor who treated the claimant may not respond promptly to the claimant's request for documentation. Claimants' advocates have suggested that 30 days would be sufficient. That suggestion is incorporated in the amendment.

Section 22-054.34

Specific Purpose:

This section is being amended to protect a claimant's right to a decision on a disputed issue.

Factual Basis:

The amendment is necessary because the previous language was overbroad. It allowed issues to be dismissed on the basis of a "previous state hearing," even if the previous state hearing had been dismissed without actually deciding the issue. The purpose of this regulation is to avoid a duplicate hearing of an issue that has already been decided against the same claimant. The regulation was never intended to limit a claimant's due process right to be heard on an issue not previously decided or on which the claimant had not yet been heard.

The addition of the word "decision" is necessary to clarify that the issue must have been actually decided in the prior hearing. If the issue was not raised or was raised but not decided, then the prior hearing does not support a dismissal.

The addition of the word "same" clarifies that this regulation does not support dismissing a request for hearing against a second claimant who was not a party to the first hearing, even if the same issue is raised.

Section 22-054.38

Specific Purpose:

This section is being added to establish that an Administrative Law Judge's jurisdiction is limited to issues in dispute and does not extend to moot issues.

Factual Basis:

The proposed addition is necessary to state the agency's long-standing interpretation of its enabling statutes. There is no authority for an Administrative Law Judge to give advisory decisions related to an issue not actually disputed by the parties because W&I Code section 10950 provides a hearing only for a claimant who is "dissatisfied" with a specific departmental "action or inaction" related to the claimant's application for or receipt of benefits.

Example: A claimant requests a hearing request based on county inaction. Then, the county grants all requested aid with a notice of action. The claimant nevertheless declines to withdraw the hearing. The claimant still wants the Administrative Law Judge to hear the case. The Administrative Law Judge may dismiss the case because it has been fully resolved by a final action.

Example: A claimant requests a hearing to dispute a Welfare-to-Work sanction. After the claimant appeals, the county exempts the claimant from Welfare-to-Work requirements, rescinds the sanction with a notice of action and restores aid. The claimant still wants the Administrative Law Judge to hear the case. The Administrative Law Judge may dismiss the case because it has been fully resolved by a final action.

Example: A claimant receives a CalWORKs overpayment notice and requests a hearing. The county rescinds the notice without stating that it will take no further action to assess or collect the overpayment. This rescission does not fully or finally resolve the issue for hearing because the county may send a new notice of overpayment. The Administrative Law Judge does not dismiss the case because it has not been fully resolved by a final action.

Section 22-054.4

Specific Purpose:

This section is being amended to make the regulation consistent with W&I Code section 10967.

Factual Basis:

This amendment is necessary because W&I Code section 10967 provides that the claimant has the right to raise the adequacy of the county's notice of action as an issue "at the time of the hearing." Under that statute and MPP section 22-009, if notice is inadequate, then any request for hearing is timely. Since the claimant has the right to raise adequacy as an issue "at the time of hearing," the agency lacks authority to determine that issue prior to the hearing as part of the decision to dismiss an untimely request for hearing.

The amendment deletes the reference to MPP section 22-054.32, which permits dismissals based on untimely requests for hearing, from the list of grounds for dismissal without a hearing and written decision. The proposed deletion is necessary to bring the pre-hearing dismissal regulation within the agency's authority and make it consistent with W&I Code section 10967.

Although pre-hearing dismissal is not available, a county may request bifurcation under MPP section 22-049.531 to resolve the adequacy of the notice (and any related issues of good cause for delay or equitable estoppel, as provided by W&I Code section 10951) prior to a hearing on the merits.

Section 22-062.5

Specific Purpose:

This section is being amended to specify the correct procedures for an Administrative Law Judge to refer allegations of discrimination for appropriate action when allegations arise during a hearing.

Factual Basis:

The amendments are necessary because the procedures for referring alleged discrimination and other civil rights violations have changed. The CDSS's Civil Rights Bureau and DHCS's Office of Civil Rights now receive referrals of allegations raised in state hearings. The allegations are no longer reported to the counties where they are alleged to have occurred. The proposed amendment is also necessary to make the regulation consistent with MPP section 21-203.11 and to correct a typographical error. Without amendment the regulation would refer to a nonexistent subdivision of MPP section 21-203.

Sections 22-065.12 and .121 to .124

Specific Purpose:

This section is being amended to make the regulation consistent with W&I Code section 10960(b)(7). This section is also being amended to require a person who requests a rehearing based on new evidence to either submit the new evidence or explain why it cannot be submitted.

Factual Basis:

The W&I Code section 10960(b)(7) establishes grounds for rehearing when "newly discovered evidence, that was not in custody or available to the party requesting rehearing at the time of the hearing, is now available and the new evidence, had it been introduced, could have changed the hearing decision." To determine whether new evidence "could have changed the hearing decision," the State Hearings Division needs to examine the new evidence. Therefore, the proposed addition to MPP section 22-065.121 requires the person requesting a rehearing to provide the new evidence. If the new evidence cannot be produced, the proposed addition allows the requesting party to explain why. The proposed amendment of "will" to "could have" in MPP section 22-065.124 makes the regulation consistent with the enabling statute. Subsections .122 to .124 are also being amended for editorial purposes.

Sections 22-065.131, .142

Specific Purpose:

These sections are being amended to change the presumed mailing time for a decision or a request for rehearing to five days rather than three days. The amendments protect claimants' rights to rehearing by allowing more time to request a rehearing.

Factual Basis:

These amendments are necessary because a claimant's right to request a rehearing is limited to the 30 days after a decision is received. Where the date of receiving the decision or mailing a request for rehearing are unknown, these sections presume the dates based on mailing time. The amended presumption of five days, rather than three days, for mailing time is consistent with the time for mailing required in Code of Civil Procedure section 1013(a), which governs service of process in civil actions. The extended period is also more consistent with the time actually required for a request for hearing to be placed in a mailbox, picked up by the postal service, delivered to the CDSS central mail room and forwarded to the State Hearings Division.

Section 22-065.15, 16

Specific Purpose:

This section is being added to define the term "good cause" and to allow a party to request a rehearing more than 30 days after the decision, if there is good cause for the delay or if equitable jurisdiction applies.

Factual Basis:

This addition is necessary because W&I Code section 10960(a) requires rehearing requests to be made within 30 days after the director's decision. The W&I Code section 10960(f) provides that a claimant may request a rehearing more than 30 days after receipt of a hearing decision in certain circumstances. The State Hearings Division has determined that Subdivision 10960(f)(1) allows a claimant to file a late request for rehearing when the claimant did not receive the decision or had good cause for filing late. The proposed additions also provide the statutory definition for "good cause." The proposed additions also allow for the application of equitable jurisdiction, as provided by Subdivision 10960(f)(3).

Section 22-065.3

Specific Purpose:

This section is being amended to make the regulation consistent with W&I Code section 10960(a) by stating that the time limit to act on a rehearing request is 35 rather than 15 days and by deleting reference to a request being deemed denied if not acted upon timely.

Factual Basis:

This amendment is necessary because W&I Code section 10960, as amended by AB 921 (Chapter 502, Statutes of 2007, section 1, effective January 1, 2008) and SB 1421 (Chapter 179, Statutes of 2008, section 242, effective January 1, 2009) provides that the director shall grant or deny a rehearing request no later than the 35th working day after the request is made. The AB 921 revised the statute's prior requirement to grant or deny "no earlier than the fifth nor later than the 15th working day." The AB 921 also eliminated the sentence deeming a request denied if not acted on within 15 days. The amendments are necessary to make the regulation consistent with the enabling statute.

Section 22-069.121

Specific Purpose:

This section is being amended to allow the county to submit a copy of the request for hearing, rather than the original, to the Administrative Law Judge at hearing.

Factual Basis:

This amendment is necessary because rehearing requests are received and stored electronically. There may be no "original" request, and even when there is a paper original, electronic storage is more efficient and secure. To accommodate electronic filing, this amendment allows the use of either the original or a copy of the hearing request.

Section 22-071.1

Specific Purpose:

This section is being amended to add the requirement for adequate notice to applicants entitled to hearings under the Resource Families Approval process or the order in *Harris v. CDSS*, Sacramento Superior Court Case No. 34-2010-8000438, entered June 13, 2012. The section is also being renumbered as required by the addition, to designate listed items with letters (a) through (j), rather than numbers .1 to .20.

Factual Basis:

The amendment is necessary to adopt as a regulation the settlement in *Harris v. CDSS*, Sacramento Superior Court Case No. 34-2010-8000438, order entered June 13, 2012, which requires notice of adverse home decisions. The amendment is also necessary to implement hearing rights the Resource Family Approval program.

The renumbering is necessary to avoid confusion between the designations ".20" and ".2."

Section 22-071.3

Specific Purpose:

This section is being amended to require the use of notice forms approved by any state agency responsible for public social services, including the DHCS as well as the CDSS.

Factual Basis:

This amendment is necessary because requirements for adequate notice apply to the Medi-Cal program as well as to other public social services. Section 22-001(d)(3) defines the term "Department" to include both the CDSS and the DHCS. The proposed amendment clarifies that the provisions for adequate notice apply to both departments.

Section 22-072.5

Specific Purpose:

This section is being amended to make the regulation consistent with MPP sections 42-750.4 and 47-420.32 by clarifying that although aid is not paid pending the hearing on a noticed change or termination of supportive services, timely notice must be sent of the change or termination, and aid must be paid pending a hearing to dispute a termination without timely notice.

Factual Basis:

This amendment is necessary because the prior regulation was misunderstood to allow supportive services to be terminated without notice. In fact, MPP section 42-750.4 requires the county to notify a recipient of supportive services before changing or terminating the services. The MPP section 42-750.213 provides that supportive services are not continued as aid paid pending the hearing, even when the hearing is requested within 10 days after the notice of action. However, Section 42-740.213 does not contradict the notice requirement. Section 42-740.213 applies only to changes in supportive services for which the county sends a timely notice of action as required by Section 42-750.4.

Sections 22-072.611 to .613

Specific Purpose:

This section is being amended to clarify the right to and limits on aid pending a hearing when a request for hearing is conditionally withdrawn and the county has sent a new notice in compliance with the conditional withdrawal agreement. The subsections are renumbered as required by the addition of this clarification.

Factual Basis:

This amendment is necessary to protect the claimant's right to aid pending the hearing while the county complies with the conditional withdrawal agreement. Some counties misunderstood the regulation to allow aid pending the hearing to cease at the time the conditional withdrawal was agreed upon. The amendment is also necessary to limit the county's duty to provide aid paid pending after it has sent a redetermination notice in compliance with the conditional withdrawal agreement.

Section 22-072.621

Specific Purpose:

This section is being amended to substitute "whether" for "that" and make appropriate grammatical corrections to clarify that the Administrative Law Judge must determine whether aid paid pending is appropriate to each issue presented, but is not required to order aid paid pending unless the facts and law support it. The proposed amendments also substitute "any" for "the" to acknowledge that the Administrative Law Judge may not have made any aid paid pending order at the original hearing.

Factual Basis:

When a request for hearing presents multiple issues, the Administrative Law Judge must determine whether aid paid pending is appropriate as to each issue. The amendment of Section 22-072.621 is necessary to clarify that the Administrative Law Judge is not required to find that aid paid pending is appropriate; rather, the determination will depend on the fact and law of the particular case.

Section 22-073.11

Specific Purpose:

This section is being amended to allow counties to provide aid pending the hearing in the form of electronically transferred benefits.

Factual Basis:

This amendment is necessary because aid is no longer provided by mailed paper checks, but is usually provided in the form of electronically transferred benefits accessible through an electronic benefit transfer card.

(See above for Specific Purpose and Factual Basis for amendments to Section 22-073.12, discussed with Sections 22-004.1, .2, .22 and .3)

Section 22-073.211

Specific Purpose:

This section is being amended to allow the county to contact the claimant's authorized representative, if the claimant has appointed one, when the county needs more information to clarify the issue raised in the request for hearing.

Factual Basis:

This amendment is necessary to make the regulation consistent with Section 22-085.1 by protecting the claimant's right to appoint an authorized representative, as described in Section 22-085.1, for all aspects of the hearing process, including assisting the county with identifying the dispute.

Section 22-073.231

Specific Purpose:

This section is being amended to allow the county to contact the claimant's authorized representative, if the claimant has appointed one, when the county representative determines that the county's action was incorrect and an attempt at informal resolution is required.

Factual Basis:

This amendment is necessary to protect the claimant's right to appoint an authorized representative, as described in Section 22-085.1, for all aspects of the hearing process, including informal resolution.

Section 22-073.232(b)

Specific Purpose:

The proposed amendments clarify the county's duty to identify "other issues," rather than "further contentions," for hearing.\

Factual Basis:

The substitution of "whether" for "if" corrects an error of word usage. The substitution of "other issues" for "further contentions" clarifies the county representative's duty, which is to identify all issues the claimant intends to raise at the hearing.

Section 22-073.251(c)

Specific Purpose:

This section is being amended to establish requirements for a written position statement when the county is unable to determine the issue in dispute despite good-faith attempts to satisfy its obligations to contact the claimant for clarification, determine what other issues the claimant will raise at hearing, evaluate the county's action, resolve the case informally if possible and assist the claimant in preparing the case for hearing.

Factual Basis:

This amendment is necessary because W&I Code section 10952.5 provides that if regulations require an agency to prepare a written position statement on the issues in question for hearing, the statement must be available not less than two working days prior to the hearing. The MPP section 22-073.251 requires the position statement to include a summary of relevant facts, regulatory justifications for the county action, budget computations as applicable and documentary evidence and witness lists. County representatives expressed concern that in some cases they are unable to determine the disputed issue despite their good-faith attempts to review the case and contact the claimant. For example, the county representative might review the hearing request and find no issue specified, review the case file and find no adverse actions within the previous 90 days and attempt to contact the claimant and receive no call back. The amendment allows the county to submit a statement of position that describes the county's good-faith efforts to determine, review and resolve the disputed issues.

Section 22-085.1

Specific Purpose:

This section is being amended to allow a claimant to name more than one authorized representative and to require a claimant who names more than one authorized representative to designate a lead authorized representative. This section is also being amended to eliminate the prior requirement that an authorized representative must be appointed after the county action disputed in the hearing request.

Factual Basis:

This amendment requiring a lead representative is necessary to promote efficiency and order in the hearing process. The MPP section 22-085.1 allows a claimant to designate an authorized representative. In some cases, a claimant may name several persons as authorized representatives. To prevent contradictory or unclear communications, the county representative must know which authorized representative has authority to speak for the claimant. To prevent disorder during the hearing, the Administrative Law Judge must also know which authorized representative will ask questions, make decisions about waivers, continuances and open records and receive the decision.

The omission of the requirement to designate a representative after the disputed action is required for consistency with W&I Code section 14014.5, which states that the appointment of a representative is effective until cancelled. This means that an applicant or beneficiary who designates an authorized representative is entitled to be represented by the authorized representative in a state hearing to dispute an action taken after the appointment. The prior language of section MPP 22-085.1 would have required an additional authorization, which would be inconsistent with the statute.

Section 22-085.13, .14 and .24 (as renumbered)

Specific Purpose:

This section is being amended to make it consistent with W&I Code section 14014.5 by adding protections for incompetent claimants.

Factual Basis:

The amendment to MPP section 22-085.13 is necessary to add the definition of "competent" stated in W&I Code section 14014.5(g)(2). The amendment to MPP section 22-085.14 is necessary to protect claimants who have conservators appointed by a court, who may otherwise be subjected to actions by self-dealing representatives acting without the knowledge or authority of the court-appointed conservator. The Amendment to MPP section 22-085.24 is necessary to allow incompetent persons to be represented in state hearings when that is in the incompetent person's best interest, as required by W&I Code section 14014.5(j).

Section 22-085.23

Specific Purpose:

This section is being amended to allow attorneys and their staff to appear as authorized representatives for an incompetent claimant, based on their statement that the claimant is their client.

Factual Basis:

The amendment is necessary to conform with the practices of other judicial and quasi-judicial bodies who accept and act on an attorney's statement that the attorney represents the client on whose behalf the attorney is petitioning. Under California law, members of the bar have a professional duty to make only truthful communications with a judicial tribunal (Rule 5-200 of the California Rules of Professional Conduct) to avoid conflicts with the client's interests (Rules 3-300, 3-310) and to keep the client informed (Rule 3-500). Therefore an attorney for the incompetent claimant may be permitted to

represent the claimant, similarly to a relative of the person who signed the statement of facts, without a separate authorization presented to the State Hearings Division.

b) Identification of Documents Upon Which Department Is Relying

Harris vs. CDSS

AB 921, Statutes of 2007

AB 12, Statutes of 2010

AB 1, Statutes of 2013

SB 855, Statutes of 2014

AB 403, Statutes of 2015

AB 1997, Statutes of 2016

c) Local Mandate Statement

These regulations do impose a mandate upon local agencies, but not on school districts. There are no "state-mandated local costs" in these regulations which require state reimbursement under Section 17500 et seq. of the GC because any costs associated with the implementation of these regulations are costs mandated by the federal government within the meaning of Section 17513 of the GC.

d) Statement of Alternatives Considered

In developing the regulatory action, CDSS considered the following alternatives with the following results:

1. No Action

The CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The amendments do not affect small businesses, because participants in state fair hearings are private persons or public agencies.

e) Statement of Significant Adverse Economic Impact On Business

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the fact that all participants in state fair hearings are private persons or public agencies. Small businesses are not participants in state hearings on public social services.

f) Economic Impact Assessment

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand businesses in the State of California.

The Creation or Elimination of Jobs Within the State of California

These proposed regulations aim to conform with changes to statutes governing due process for hearings related to public social services and to implement suggestions from stakeholders for improving due process in these hearings. The proposed amendments do not affect substantive rights or duties for individuals receiving social services, nor for public and private agencies administering the social services programs. Therefore, the Department has determined that this regulatory proposal will not have an impact on the creation or elimination of jobs in the State of California.

The Creation of New Businesses or the Elimination of Existing Businesses Within the State of California

These proposed regulations aim to conform with changes to statutes governing due process for hearings related to public social services and to implement suggestions from stakeholders for improving due process in these hearings. The proposed amendments do not affect substantive rights or duties for individuals receiving social services, nor for public and private agencies administering the social services programs. Therefore, the Department has determined that this regulatory proposal will not have an impact on the creation or elimination of existing businesses within the State of California.

The Expansion of Businesses Currently Doing Business Within the State of California

These proposed regulations aim to conform with changes to statutes governing due process for hearings related to public social services and to implement suggestions from stakeholders for improving due process in these hearings. The proposed amendments do not affect substantive rights or duties for individuals receiving social services, nor for public and private agencies administering the social services programs. Therefore, the Department has determined that this regulatory proposal will not have an impact on the expansion of businesses currently doing business within the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety and the State's Environment

The benefits of the regulatory action to the health and welfare of California residents, worker safety and the state's environment are as follows: bringing hearing regulations into conformity with enabling statutes, making hearings more fair and efficient and improving access to due process for applicants and recipients of public benefits.

g) Benefits Anticipated from Regulatory Action

The action modernizes CDSS procedures by providing for electronic communications, clarifies ambiguities in the previous regulations and responds to stakeholder requests for additional clarity and protections.

h) Statement of Specific Technology or Equipment

This regulatory action will not mandate the use of new, specific technologies or equipment. While electronic communications are allowed for private persons who prefer them, they are not required.

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California.